

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016050013

ORDER DENYING REQUEST FOR
CONTINUANCE

On June 3, 2016, Sacramento City Unified School District filed a request to continue the dates in this matter with the Office of Administrative Hearings. Sacramento City's request is based upon the unavailability of witnesses and its legal counsel, Sarah Garcia. This case was filed on April 22, 2016 and a scheduling order was sent to the parties on May 2, 2016, with the first date of hearing scheduled for June 16, 2016. There have been no continuances in this matter.

On June 6, 2016, Student opposed the motion to continue. Student contends that she has been out of placement for a considerable amount of time and that Student would be harmed if this matter were continued until after September 1, 2016, the dates that Sacramento City has requested. The opposition was accompanied by an unsigned declaration of Parent. A copy of the signed declaration was received on June 7, 2016.

Specifically, Sacramento City alleges that Ms. Garcia will be out of town from June 1 through June 14, 2016 on a vacation, planned prior to the receipt of the scheduling order in this matter, and she will be giving a presentation on June 15, 2016. This is supported by a signed declaration under penalty of perjury, signed on June 3, 2016. Ms. Garcia also contends that she is unavailable for hearing in this matter on June 21, 22 and 23, 2016, because she is scheduled to be in hearing in an expedited matter in OAH case number 2016051009¹. She contends that she did not ask for a continuance prior to leaving on vacation because "she waited to see if this matter would settle or be continued by joint request of the Parties."

Sacramento City then contends general unavailability for District witnesses because of summer break which ends on September 1, 2016. Finally, Sacramento City contends specific witness unavailability, supported by declarations under penalty of perjury for potential witnesses as outlined in the following paragraphs.

¹ The expedited portion of OAH Case No. 2016051009 has been settled since the motion was filed and no longer constitutes a conflict for Ms. Garcia.

M.C.² contends she will be out of town and unavailable from June 20-July 8, 2016, July 23-July 30, 2016 and August 2-August 23, 2016. She further contends unavailability on August 25, 27, 28, 29, 30 and 31, 2016. She gives no indication when she was notified that she would be called as a witness in this matter or when she was notified of the hearing dates in this matter. She does not indicate where she will be while out of town in June, July and from August 2-23, 2016. She does not indicate she is unavailable to testify by telephone at any time.

A.E. contends she will be out of town and unavailable from June 24-26, 2016, July 7-8, 2016, July 11-15, 2016 and July 20-23, 2016. She contends that arrangements for these out of town travels have already been made. She contends unavailability because she is participating in trainings on August 18 and 18, 2016, orientation on August 23, 2016, and a staff meeting on August 25, 2016. She gives no indication when she was notified that she would be called as a witness in this matter or when she was notified of the hearing dates in this matter. She does not indicate where she will be while out of town in June and July. She does not indicate she is unavailable to testify by telephone at any time.

S.F. contends he will be unavailable because of a teacher workday on June 17, 2016, and because of teacher trainings on August 23-25, 2016. He contends he has pre-planned vacations and will be unavailable from June 20-23, June 28-July 1, July 5, July 11-13, July 21-22, July 29, August 1-4 and August 29-30, 2016. He gives no indication when he was notified that he would be called as a witness in this matter or when he was notified of the hearing dates in this matter. He does not indicate where he will be while out of town in June, July and August. He does not indicate he is unavailable to testify by telephone at any time.

M.G. contends that she will be unavailable due to child care obligations from June 16-August 21, 2016. From August 11 – August 21, 2016, she will also be unavailable after 1:00 p.m. on Wednesdays and after 2:00 p.m. all other days due to child care obligations. She contends that she is unable to secure alternative care for her children during all these times. She contends she is on vacation from August 22-August 24, 2016, and at a staff meeting on August 25, 2016. She gives no indication when she was notified that she would be called as a witness in this matter or when she was notified of the hearing dates in this matter. She makes no contends regarding the ages of her children, any specialized child care they may or may not need or any efforts to obtain care on any of the dates she listed. She does not indicate she is unavailable to testify by telephone at any time.

S.P. contends that she is starting a new job and must attend out of town management team meetings from June 12-16, 2016, and August 2-8, 2016. She gives no indication when she was notified that she would be called as a witness in this matter or when she was notified of the hearing dates in this matter. She does not indicate she is unavailable to testify by telephone at any time.

² Initials of the specific staff members are used to protect their safety and privacy, as this order lays out times they claim they will away from home.

L.R. contends that she will be out of town and unavailable from July 5, 2016, through August 8, 2016. She does not state where she will be or for what purpose she will be out of town. She gives no indication when she was notified that she would be called as a witness in this matter or when she was notified of the hearing dates in this matter. She does not indicate she is unavailable to testify by telephone at any time.

R.R. contends that she will be unavailable on either June 20 or 21, 2016, because she is attending a parent orientation at a college. She has a dental appointment on June 30, 2016. She has a medical procedure scheduled for July 22, 2016 and will have as yet unscheduled medical appointments relating to this in June and July. She is also unavailable because she is taking personal days off from August 11-12, 2016 and September 29-30, 2016. She gives no indication when she was notified that she would be called as a witness in this matter or when she was notified of the hearing dates in this matter. She does not indicate she is unavailable to testify by telephone at any time.

N.Y. contends she will be on a preplanned trip to Texas from June 28-July 4, 2016 and will be unavailable during that time. There is no indication when N.Y. was notified that she would be called as a witness in this matter or when notification of the hearing dates in this matter took place. The declaration does not indicate that N.Y. is unavailable to testify by telephone at any time.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. Sacramento City's claim of general unavailability because school is

on break in the summer is unpersuasive. There is no exception to the timelines for a due process hearing because schools are out on summer break. As to Ms. Garcia's claimed unavailability, there is no conflict with either her vacation or her presentation, as both of these activities will be concluded prior to the start of the hearing in this matter. There is also no conflict with the expedited matter, as that matter has settled.

As to the individual witnesses and their unavailability, Sacramento City did not show that these exact witnesses are required for its defense at the hearing; did not show that these witnesses were not available to testify by telephone; did not show that they notified these witnesses promptly upon receipt of the scheduling order that they may be called as witnesses; did not attempt to subpoena these witnesses; did not establish that any of the conflicts existed prior to the receipt of the scheduling order; and did not promptly ask for a continuance. Ms. Garcia waited to ask for this continuance until she was already on vacation, although she was aware of the conflict for more than a month before the motion was filed. Further, vague contends from M.G. that she cannot secure any childcare for an entire summer do not constitute good cause.

Even if the vacations and other unavailability established good cause for a continuance, there is still no reason to continue this case. M.G.'s general claim of unavailability is not good cause and is not considered here. The hearing is scheduled to begin on June 16, 2016 and continue on June 20, 21, 22, 23 and 27, 2016, although the dates will be confirmed at the prehearing conference. M.C. is available on June 16, 2016. A.E. is available on June 16, 20, 21, 22 and 23, 2016. S.F. is available on June 16 and June 27, 2016. S.P. is available June 20, 21, 22, 23 and 27, 2019. L.R. is available on all hearing dates. R.R. is available on June 16, 23 and 27, 2016. N.Y. is available on all hearing dates.

Therefore, there has been no good cause shown for a continuance in this matter. The request to continue is denied.

IT IS SO ORDERED.

DATE: June 8, 2016

DocuSigned by:
Margaret Broussard
38BDF3720D6841A

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings